



RESPONSE UNDER 37 CFR 1.116  
EXPEDITED PROCEDURE  
EXAMINING GROUP 3625

CERTIFICATE OF MAILING UNDER 37 C.F.R. § 1.8  
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Class Mail in an envelope addressed to: Mail Stop AF,  
Commissioner for Patents, P.O. Box 1450 Alexandria, VA 22313-  
1450 on October 25, 2006.

*David G. Parkhurst*  
David G. Parkhurst, Reg. No. 29,422

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

JOHN W. MCMULLEN, ET AL.

Serial No. 10/754,155

Filed: January 9, 2004

For: STORE WITH INTERACTIVE  
MERCHANDISING SYSTEM AND  
METHOD OF OPERATION

Examiner: Amee A. Shah

Group Art Unit 3625

Docket No. CUSTB 63550

Los Angeles, California 90045

DECLARATION UNDER 37 CFR 1.131

Commissioner for Patents  
P. O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

We, JOHN W. MCMULLEN and NORMAN C. TRACY, hereby declare the following:

1. We are the inventors of pending claims 1-16, 18-23, 25-41, and 43-46 of the patent application identified above and the subject matter described and claimed therein.
2. Prior to August 22, 2003, as evidenced by a PowerPoint presentation for Project AISLE (copy attached hereto as Exhibit A) developed by us as inventors while employed by the assignee, Custom Building Products, Inc., we conceived, in this country, the concept of a system

BEST AVAILABLE COPY

and method for selling products in a home improvement or commercial construction store, including an interactive display with a visual display for disseminating information in response to requests by a user, particularly regarding installing tile or stone, and wherein the information is coordinated with the grouping of the seller's products on the shelves of the store, as is recited in the claims.

3. As is evidenced by the listing of statistics of the PowerPoint presentation attached as the front page of Exhibit A, the date of creation of Exhibit A is prior to August 22, 2003.

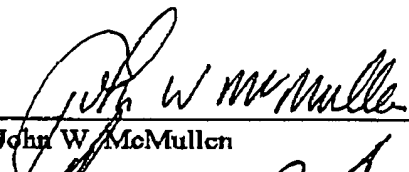
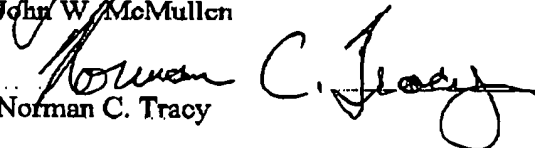
We hereby declare that all statements made herein are true and that all statements made on information are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

OCTOBER 25 2006

Date

OCTOBER 25 2006

Date

  
\_\_\_\_\_  
John W. McMullen  
  
\_\_\_\_\_  
Norman C. Tracy

144557.1

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# CUSTB63550LEGAL Properties



General | Summary | Statistics | Contents | Custom

Created: Tuesday, January 21, 2003 12:32:07 PM

Modified: Monday, August 11, 2003 3:17:20 PM

Accessed: Monday, June 12, 2006 4:27:10 PM

Printed:

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Statistics:

Statistic name	Value
Slides:	32
Paragraphs:	96
Words:	326
Bytes:	47652645
Notes:	0
Hidden slides:	0
Multimedia clips:	0
Presentation format:	On-screen Show

OK

Cancel

# Project AISLE

- An
- Integrated
- Selling and
- Learning
- Environment

# Project AISLE

## ■ Principles

- Communicate about projects to make the selection and use materials and tools clear and easy for the consumer
- Support HD associate in-aisle training

# Project AISLE

- Four parts working together:
  - ***Project Guides*** – Specific for 4 types projects
  - ***Tile & Stone Installation Answer Center*** – Interactive kiosk using video, photos, and charts to educate
  - ***Aisle Communication & Organization*** –
    - Physical placement of products
    - Color coded signs for **PREP, SET, GROUT, CARE, TOOLS** and **ANSWERS**
  - **Product Packaging**

## PROJECT TILING A FLOOR

**PREP**

**SET**

**GROUT**

**CONCEPT**

**PREPARE THE SURFACE FOR TILING**

- Over Existing grade finished or OSB Surface - Use Woodboard
- Over Concrete (if not and second condition - no board is typically needed)
- Over Uneven Concrete - Use LevelQuik Rapid Setting Self-leveling Underlayment

**MEASURING AND LAYING OUT THE TILE**

- Find center of your floor and snap chalk lines perpendicular to each other.
- Make sure chalk lines are square.
- Do a dry run layout. Place a tile where it will be laid.
- Check off any tiles with on the back of the tile with straight and scrub joints.

**SET THE TILE**

- Spread thin-set mortar on surface with a notched trowel.
- Set the tile in place while slightly moving the tile up and down to help the mortar.

**GROUT**

- Remove the spacers and spread grout using a grout float.
- Allow grout to set-up, then clean and chase grout joints with damp sponge.
- Buff off any haze still remaining with clean, dry cloth after grout has dried.

**PROTECT & MAINTAIN**

**TIPS**

- From the time the grout is applied, it will set. Avoid foot traffic to protect.
- Minimal cleaning water should be used to ensure good grout curing.
- Let grout cure typically 48-72 hours prior to sealing.

**TIPS**

- Make sure the surface is flat, smooth, clean and free of any contamination before applying cement or stone tile.
- Make your cuts during your dry run for fewer interruptions when setting.
- Travel size depends on the type and size. Thin-set should cover at least 1/8" of the back of the tile. Check for complete coverage. Don't be pulling up one tile. Clean out as much thin-set from the grout joints as you can; this will make it easier to grout.

**TIPS**

- Wash 24 hours prior to grouting.
- Mark required cuts with a grout pencil or china marker.
- Make cuts. Straight cuts using the long edge of the grout pencil or china marker.
- Place a tile where it will be laid.
- Check off any tiles with on the back of the tile with straight and scrub joints.

**TIPS**

- From the time the grout is applied, it will set. Avoid foot traffic to protect.
- Minimal cleaning water should be used to ensure good grout curing.
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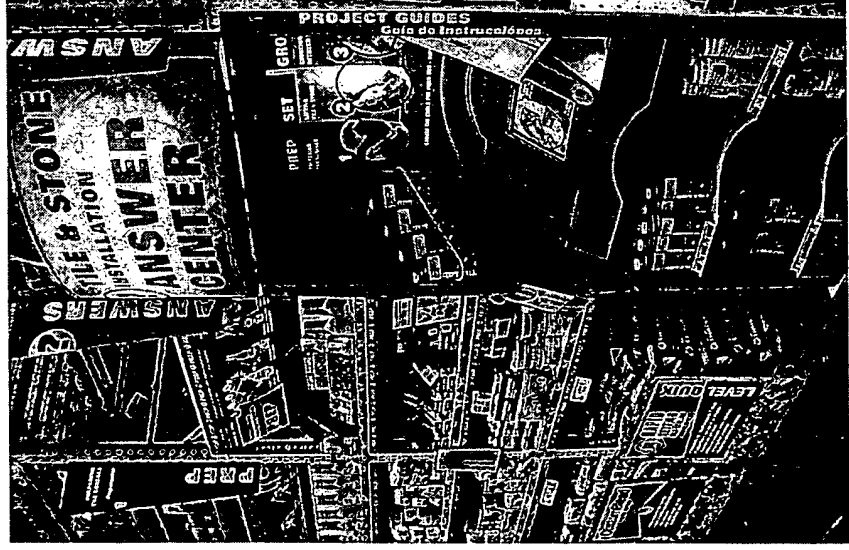
**TIPS**

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# Project AISLE

■ Kiosk

Current

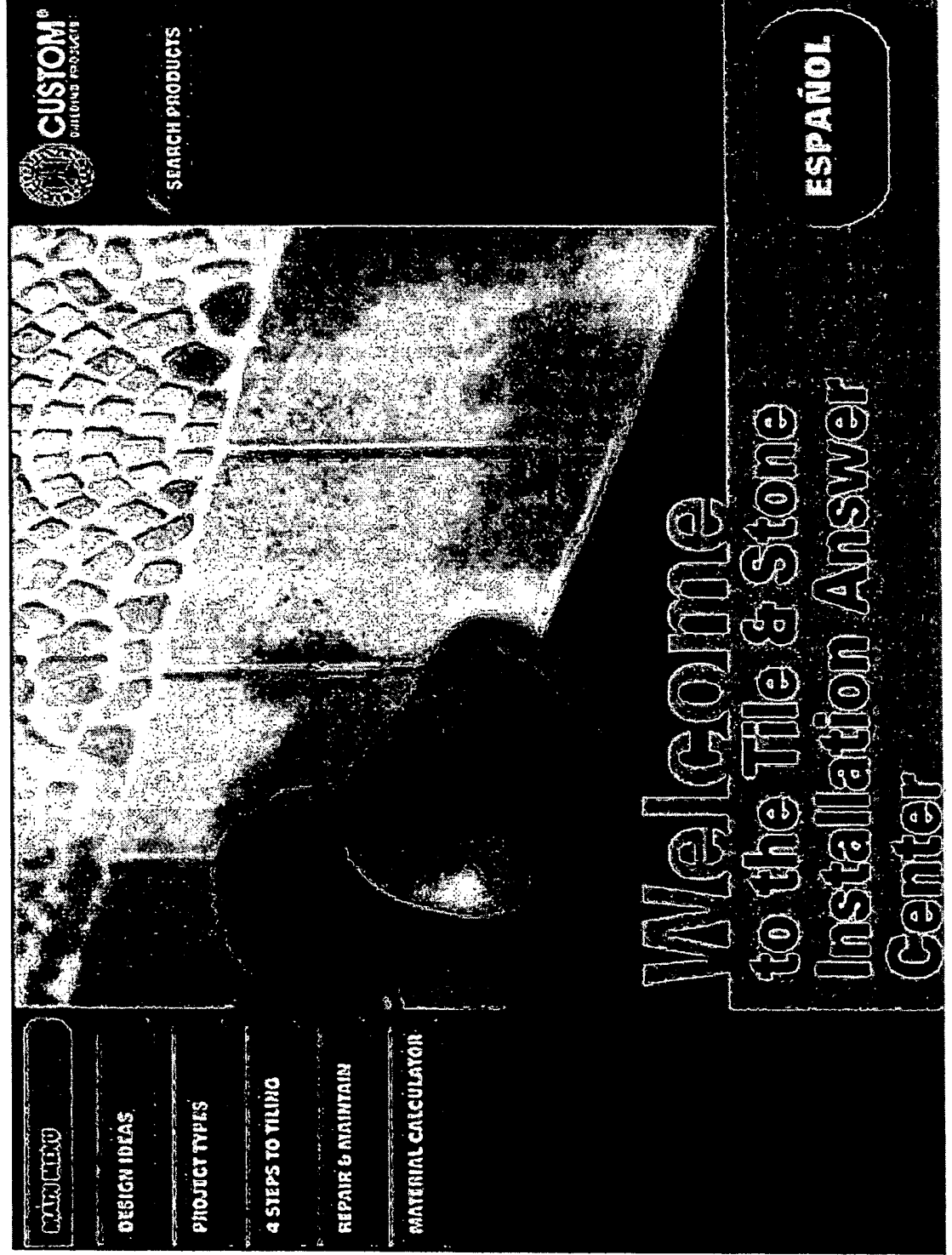


Proposed

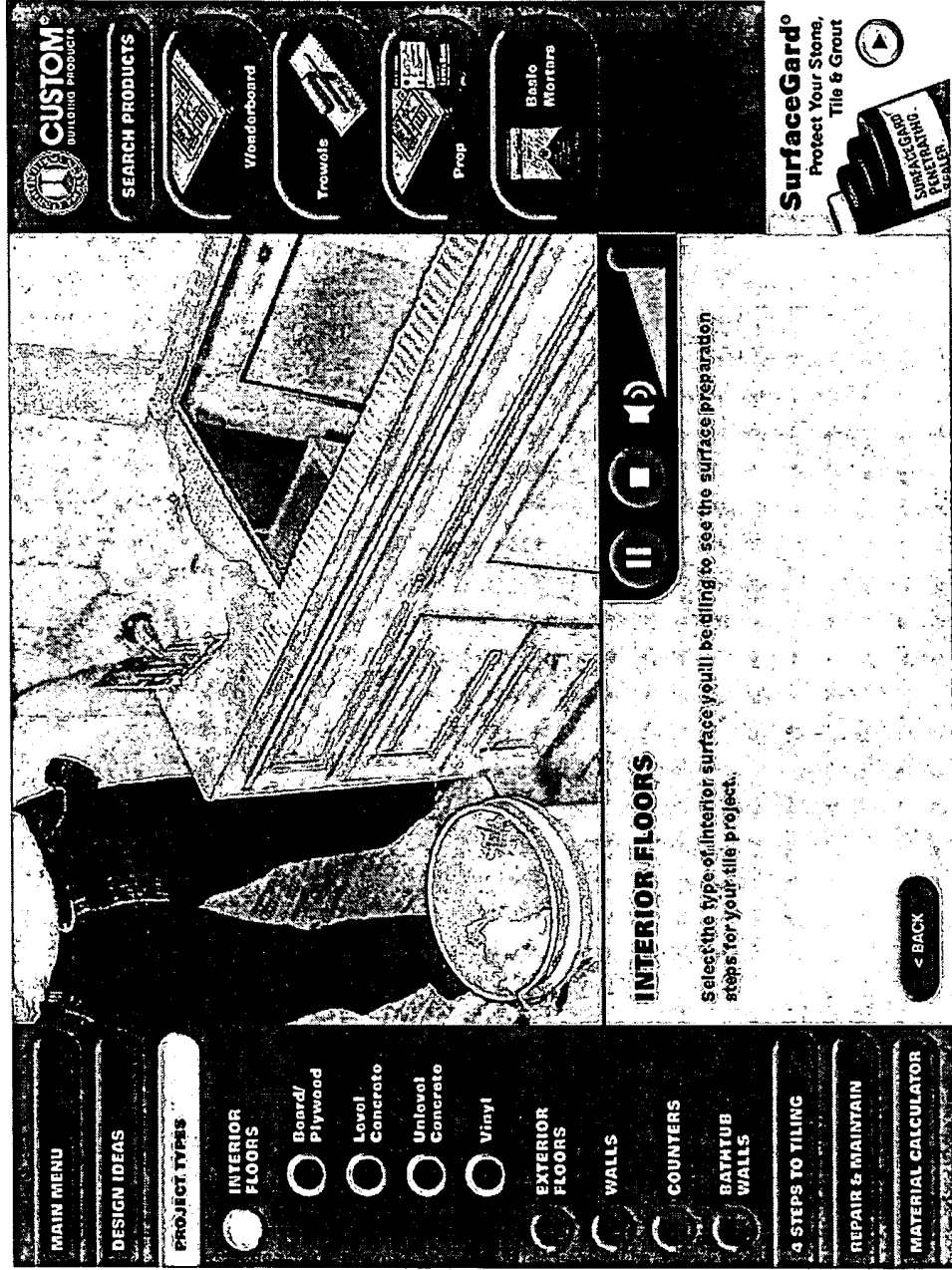




# Kiosk Sample Screen




# Kiosk Sample Screen



# **Packaging Changes**

- Maintain a cohesive Custom family look.
- Clearly communication product function & main benefits.
- Position products to support up-selling.
- Utilize a clean, straightforward design.
- Utilize the ends of the bags for better messaging.
- Distinguish between gray and white.
- Tie into Project AISLE


Old New



**WONDERBOARD®**  
 MADE TO LAST

Easy to score & snap  
 Tapeless installation -  
 saves time  
 Works great in showers  
 and saunas  
 Versatile - use inside  
 and out  
 No failures in 35 years  
 Lifetime Warranty

Also available in 1/4" thickness

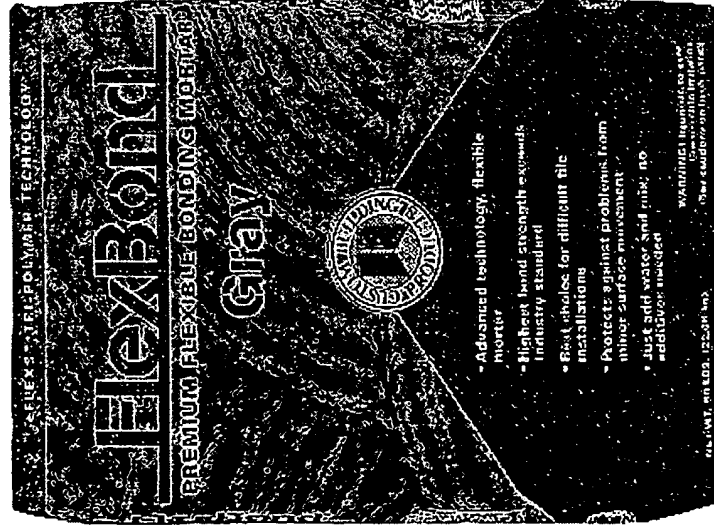


**1 1/2" CEMENT BACKERBOARD**  
 FOR WALLS, FLOORS AND COUNTERTOPS

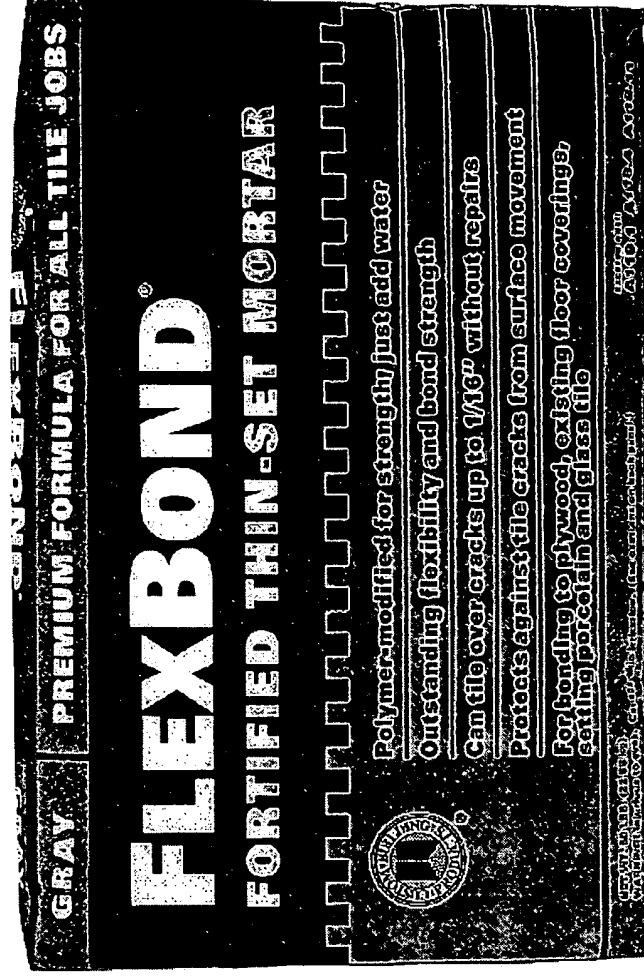
CUSTOM • BUILDING PRODUCTS 1-800-272-9766  
[www.custombuildingproducts.com](http://www.custombuildingproducts.com)

# Packaging - Mortars

Old style

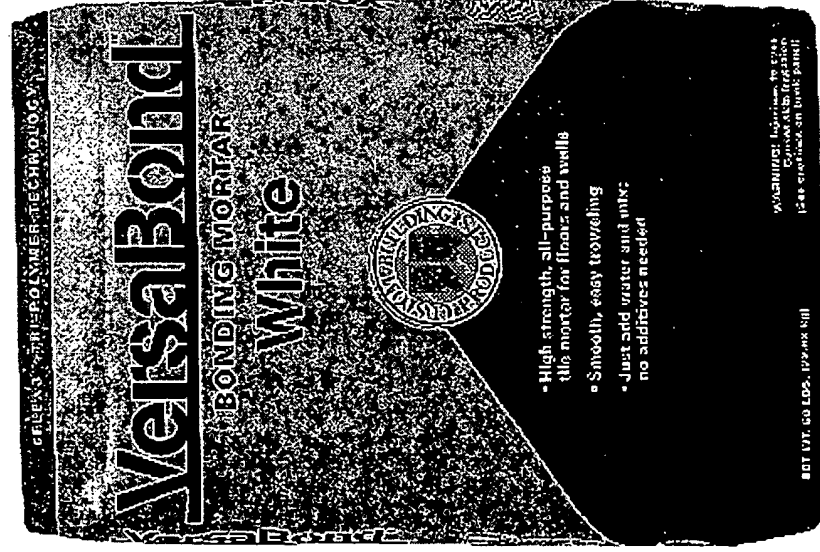


New style

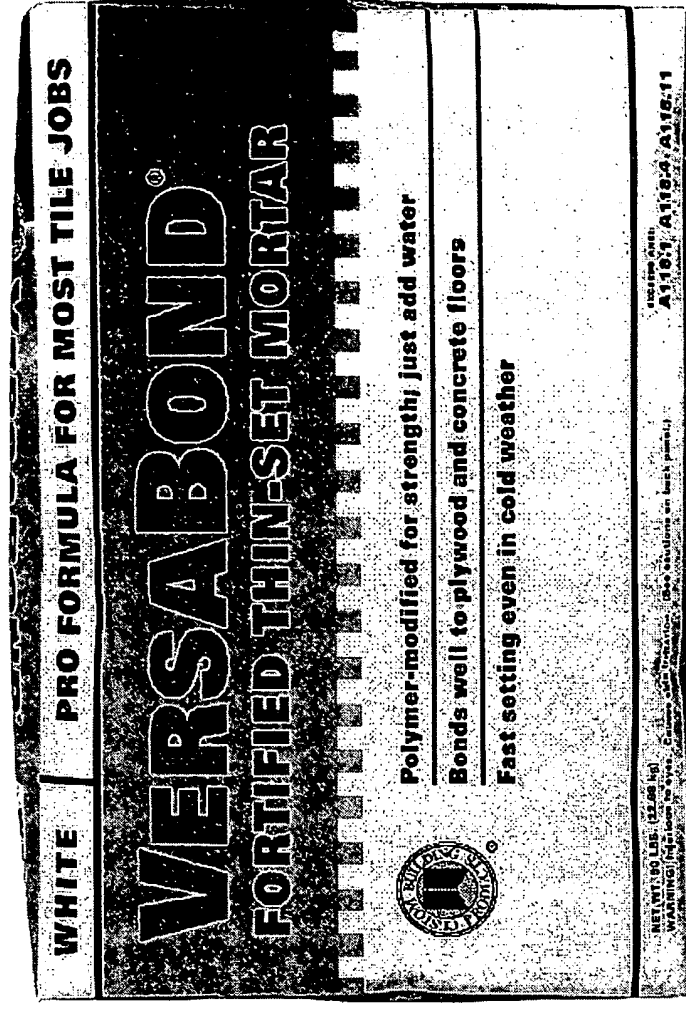


# Packaging – Mortars

Old style

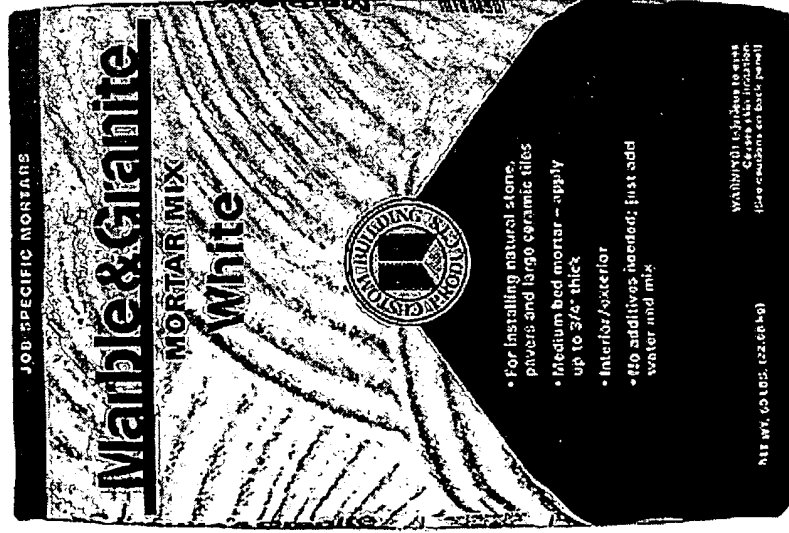


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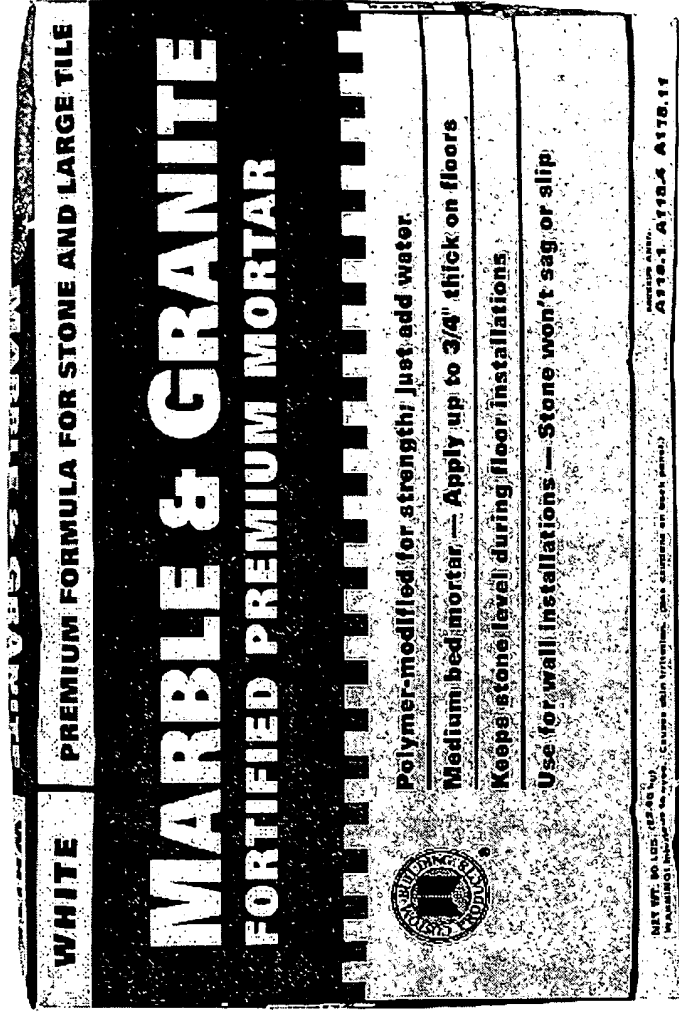


# Packaging – Mortars

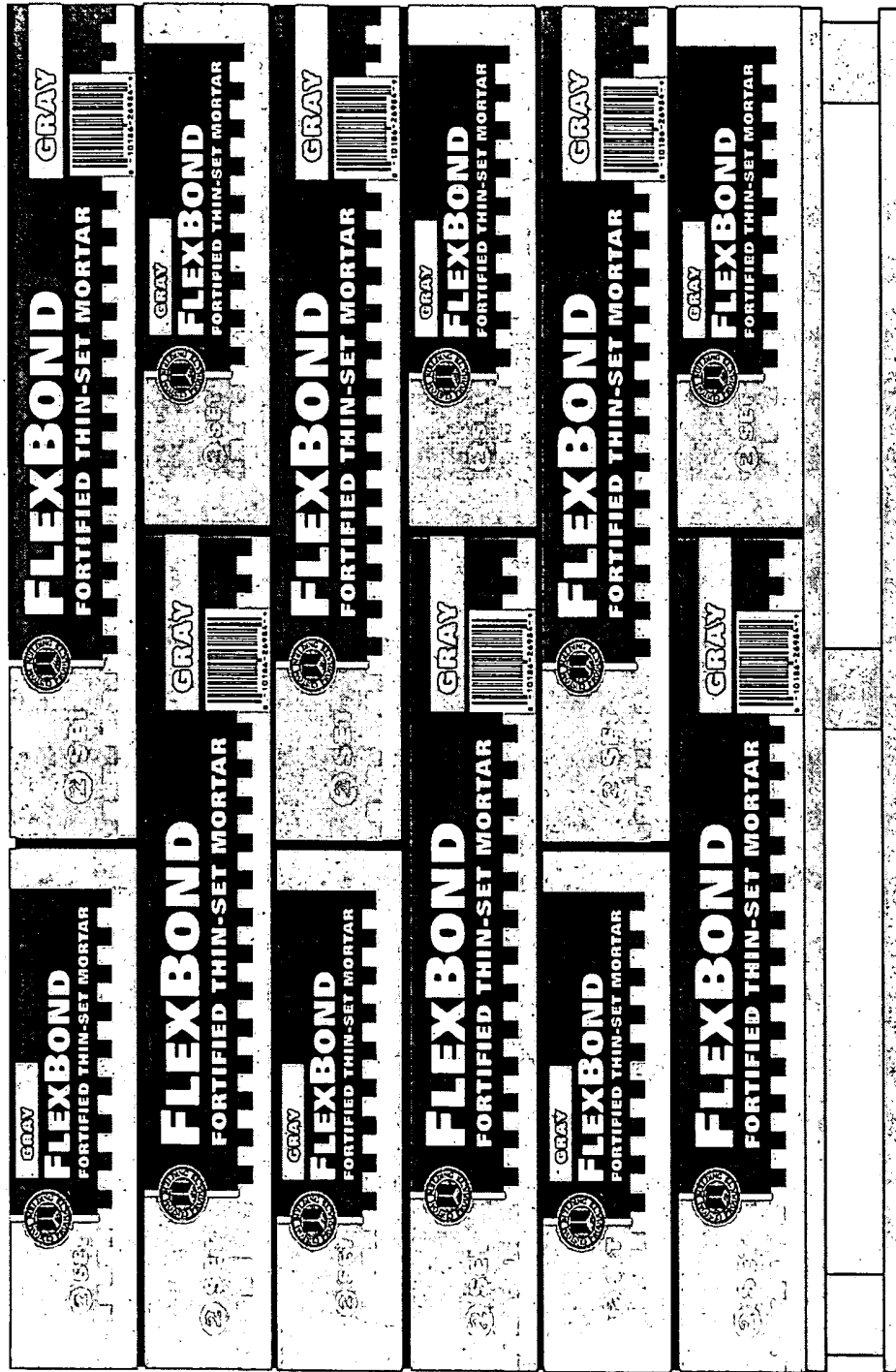
Old style



New style



# Packaging – Pallet view





# Packaging — Adhesives

Old style



New style

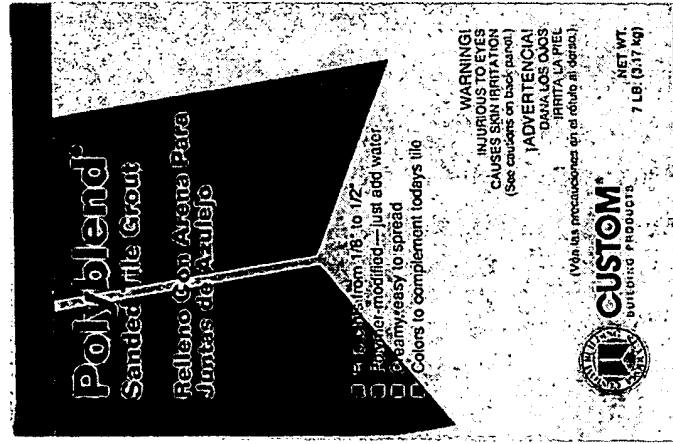


# Grout Packages

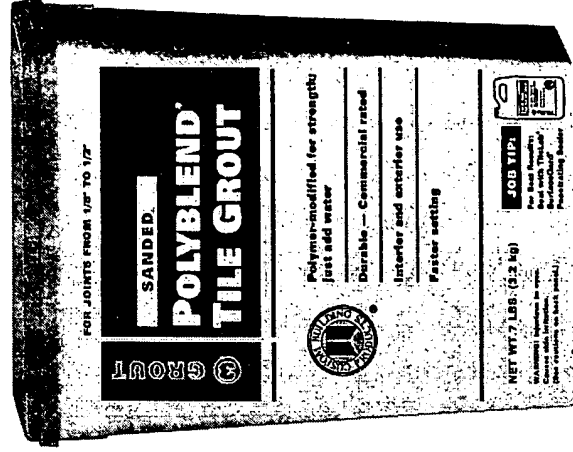
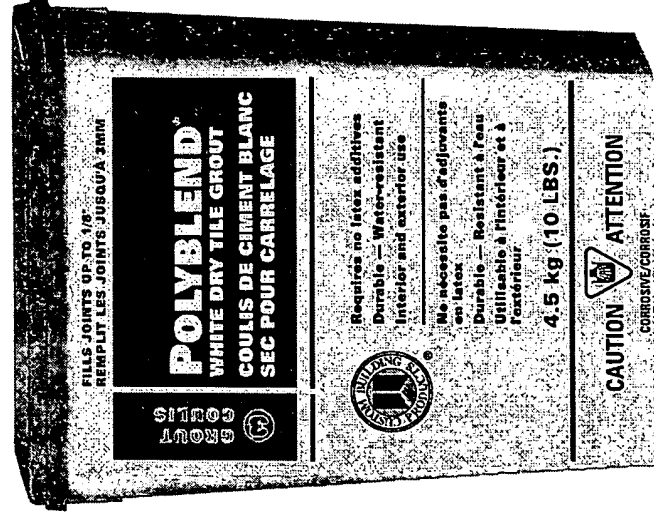
- Create new, innovative package
- Prevent sifting
- Re-useable container
- Tamper evident
- Stackable
- Maintain billboard space
- Waterproof

# Packaging — Grout

Old package



New Package

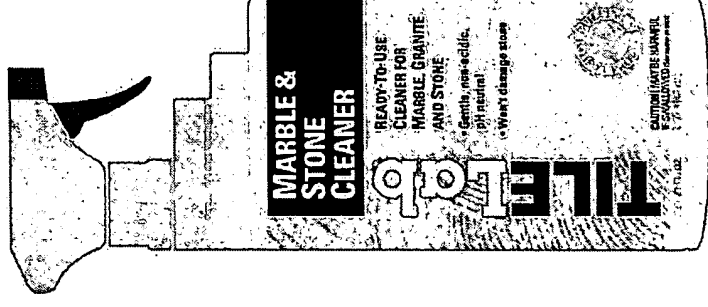
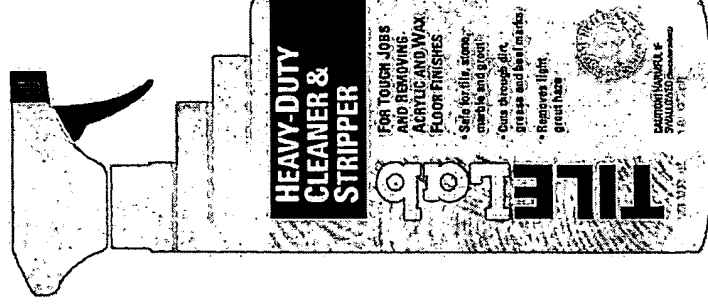
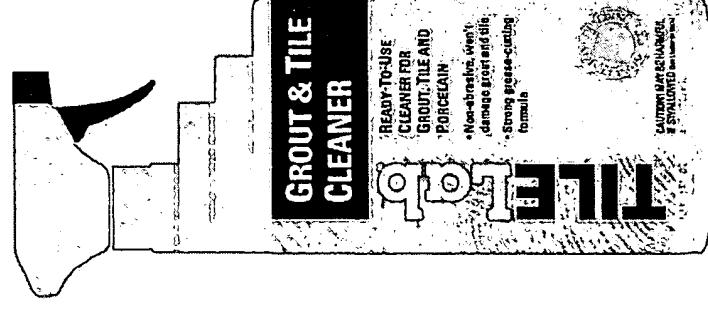


# Care – Product Packaging

- Differentiate Stone, Grout & Tile & cross-over products within the line
- Increase emphasis on higher-end products
- Avoid product/ packaging confusion

# Packaging – Care

## Cleaners - Current



# Packaging – Care – Cleaners

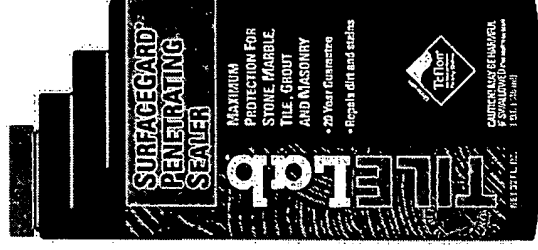
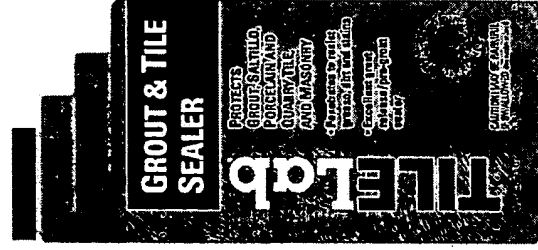
## Cleaners – New



(PROPOSED)

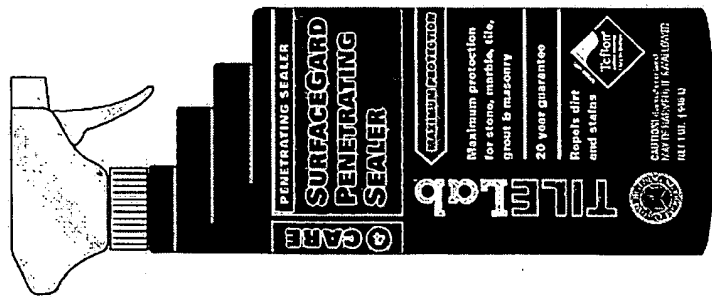
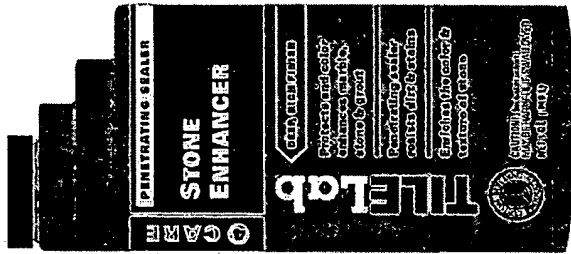
# Packaging – Care

## Penetrating Sealers - Current



# Packaging – Care – Cleaners

## Penetrating Sealers - New

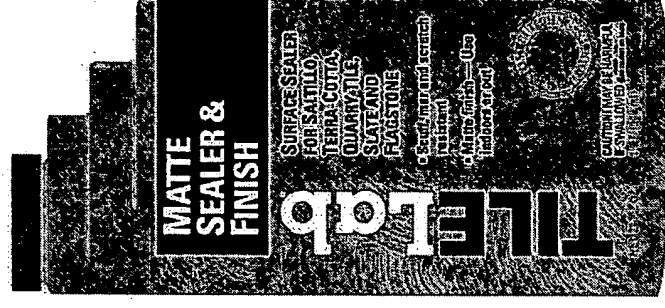


(FUTURE PRODUCT)



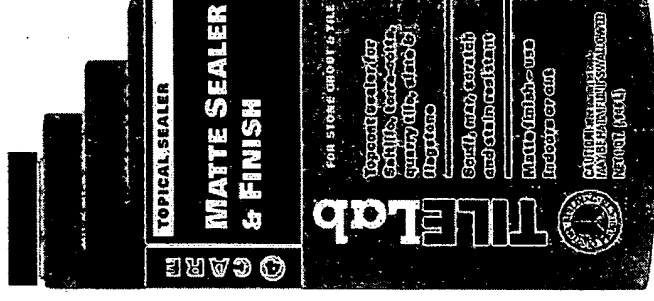
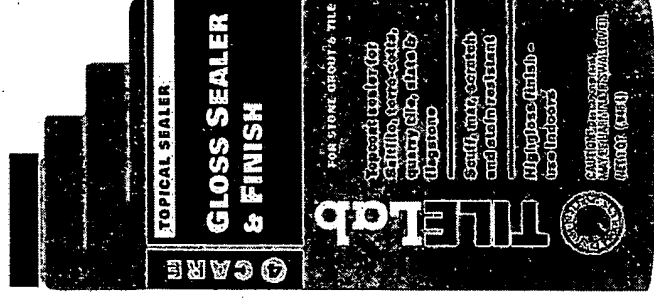
# Packaging – Care – Cleaners

## Topical Sealers - Current



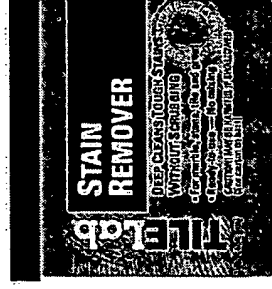
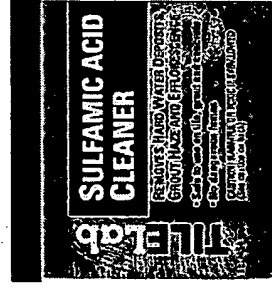
# Packaging – Care – Cleaners

## Topical Sealers – New



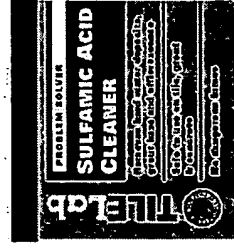
# Packaging – Care

## Problem Solvers - Current



# Packaging – Care

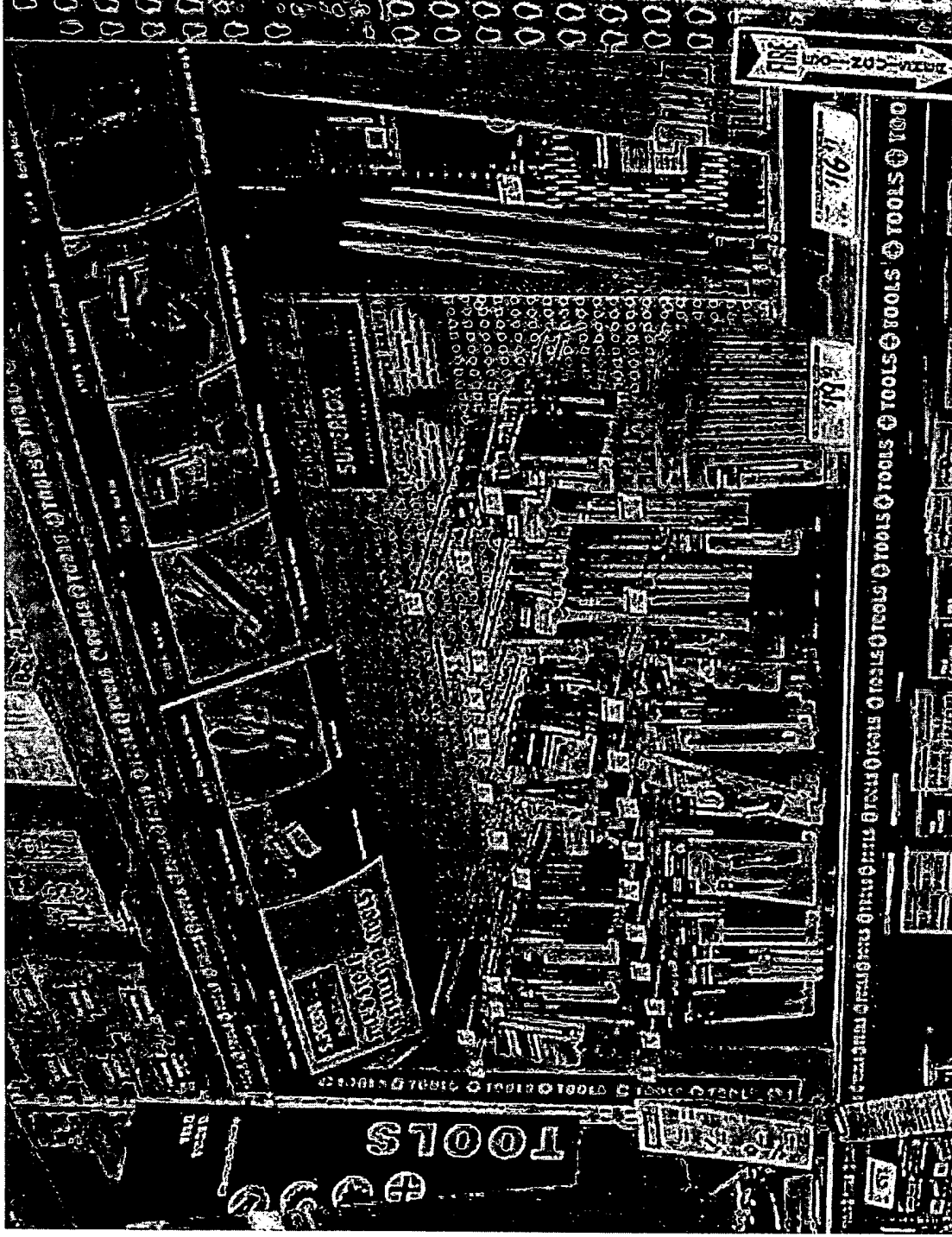
## Problem Solvers - New



# Tools - Support

- Overheads designed to show the right basic tool for each step a project
- Product Selection supported with Hang cards
- Emphasis on upper quality level ProBilt tools
  - Set at waist level for easy viewing/purchase
  - Packaging changed to yellow accent on ProBilt


# Packaging – Tools



# Tools - Support

**SUPERIOR BILT.**  
PROFESSIONALLY PREFERRED

**Tile Cutters**  
Score and snap all types of tile




## Hole Saws

Cuts 1 1/8" holes for standard plumbing fixtures



**Tile Nippers**  
Bite away small pieces of tile



## Wet Saws/Diamond Blades

Precision cuts of tile, stone and masonry



**Hand Tile Cutters**  
Score and snap all types of tile



## Coping Saw

Cuts tile of all types



**SUPERIOR BILT.**  
PROFESSIONALLY PREFERRED

**INSTALLATION CHECKLIST  
BASIC TOOLS**

**Backerboard Screws**

**Notch Trowel**

**Tile Cutter**

**Tile Spacers**

**Spacer Puller**

**Grout Float**

**Grout Sponge**

**Cheesecloth**

**TO MAKE THE JOB EASIER USE:**

**Knee Pads**

**Gloves**

**Floor Scraper**

**Margin Trowel**

**Tile Nippers**

**Level**

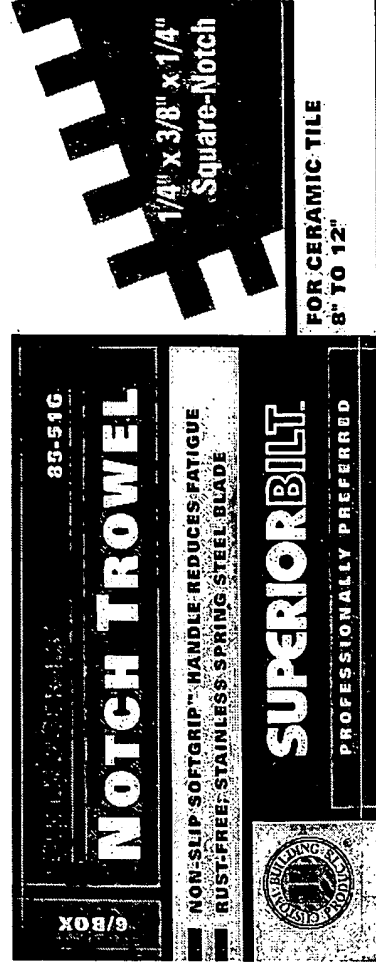
**OTHER USEFUL TOOLS:**

Wet Saw  
Diamond Blade  
Knee Bar  
Coping Saw  
Grout Applicator  
Margin Trowel  
Grout Float  
Grout Pump  
Grout Bucket  
Grout Mixer  
Grout Sifter  
Grout Sealant  
Grout Primer  
Grout Sealer



# ProBilt Trowel Label

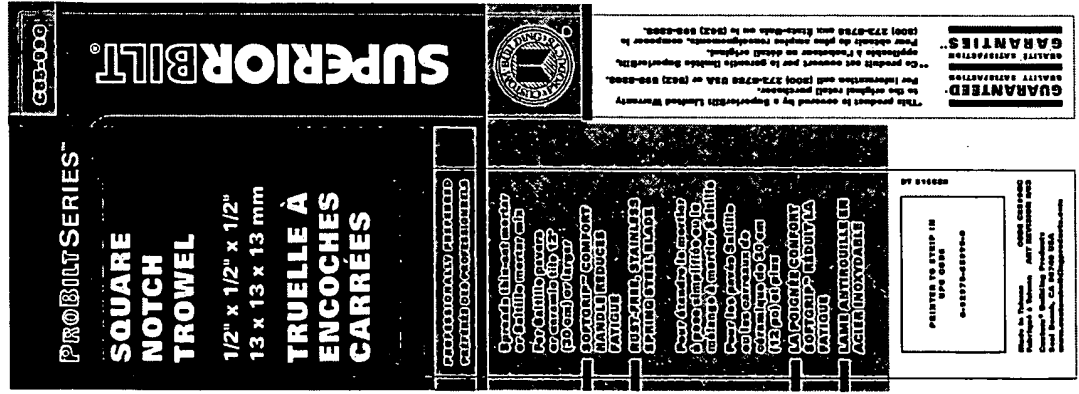
# Case Label for Trowel Selection



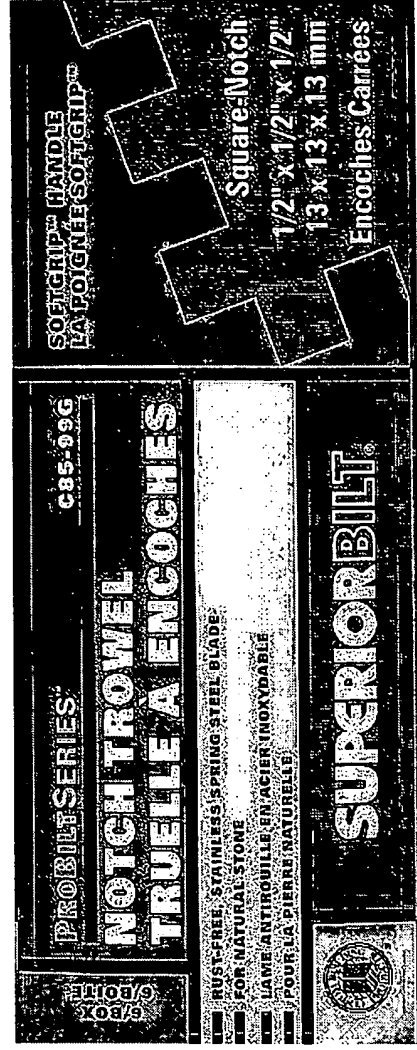


# Packaging – Tools

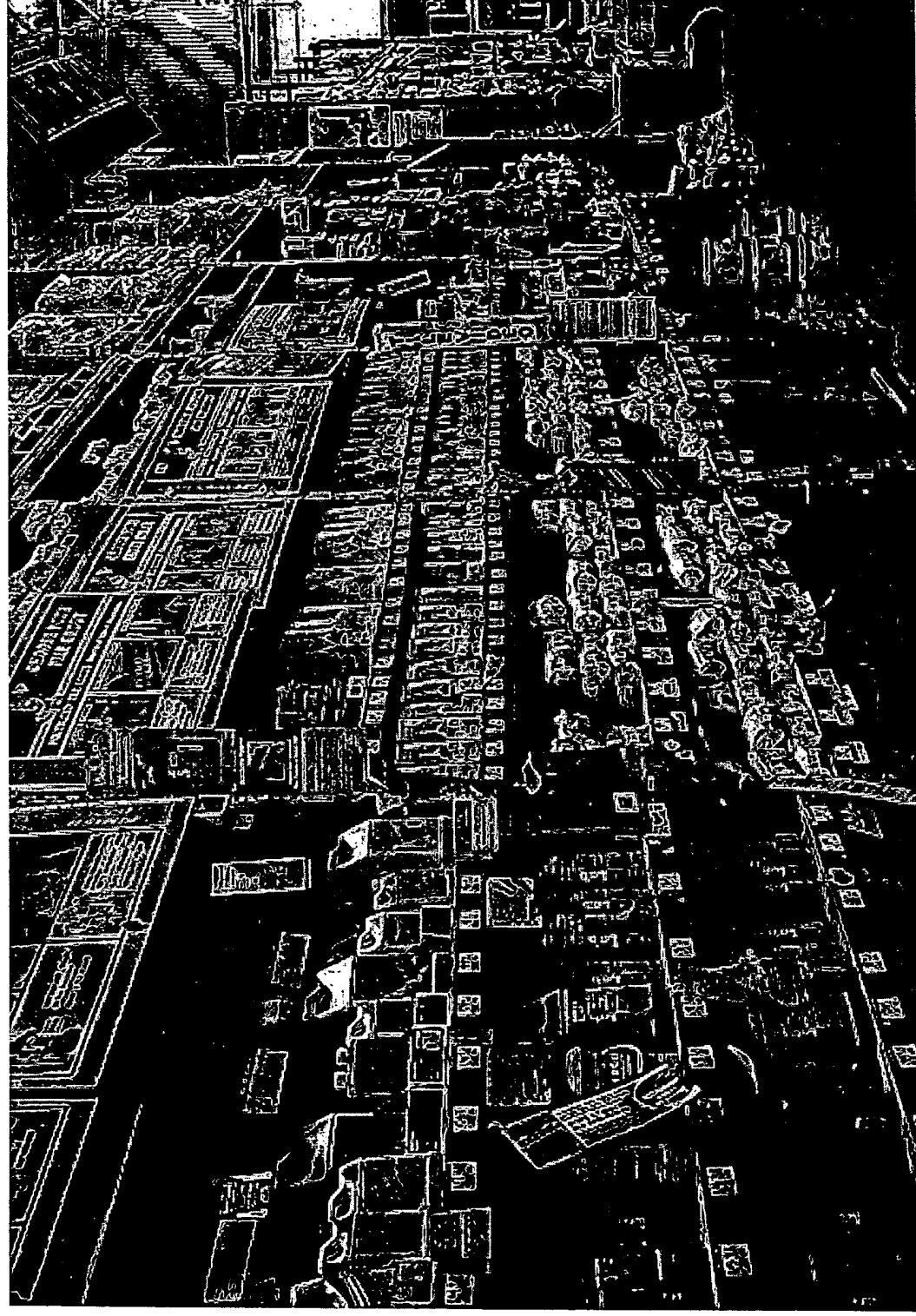
# ProBilt Trowel Label



# Case Label for Trowel Selection



# Existing Store Set



# Project AISLE™ Store Set



**David Parkhurst**

---

**From:** Michele Hill [m\_hill@hadw.com]  
**Sent:** Tuesday, August 12, 2003 5:58 PM  
**To:** Beth Scott; Norm Tracy; David Parkhurst  
**Subject:** Workspace Access

## Custom Building Kiosk Workspace

---

Hi David -

As Norm requested, I set you up with access to our client extranet that we use to post files, comps, schedules, etc. You will find here documents relating to the kiosk.

To access visit <http://work.hadw.com> and enter your full email address in the proper field. If you have not logged in before, leave the password field blank and click on New User. You will be prompted to set your own password. Once you have set it you can log in and view the project(s) you have access to.

If you have logged in before but cannot remember your password, enter your email address in the proper field and click on the Lost Your Password link which will allow you to reset your password.

If you have any questions, please let me know.

Thanks!  
-Michele

---

This message comes to you from the Hornall Anderson Workspace.  
Please respond using <http://work.hadw.com/?nodeID=33304>

8/13/2003

F U L W I D E R • P A T T O N  
I N T E L L E C T U A L P R O P E R T Y L A W

---

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Warren L. Patton  
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(1921-1978)

November 17, 2003

John W. McMullen  
Custom Building Products  
13001 Seal Beach Boulevard  
Seal Beach, CA 90740

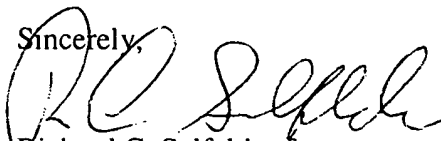
Re: Draft Application for: Store with Interactive Kiosk and Method of  
Operation  
Our Docket: CUSTB-63550

---

Dear John:

Please find enclosed two copies of the draft application for the above mentioned invention. Please review the application and have Norman Tracy review the application, making redline corrections or comments on the draft applications and return them to us as soon as possible so that we may file them with the Patent Office prior to the January 24, 2004 statutory bar date. Even if you do not have any comments or corrections, please return a copy of the draft application indicating "no comments or corrections." We look forward to receiving the draft applications back so that we may file the application by the January 24, 2004 bar date.

Sincerely,



Richard C. Salfelder for  
FULWIDER PATTON LEE & UTECHT, LLP

RCS:mv  
Enclosures  
32300.1

F U L W I D E R P A T T O N L E E & U T E C H T , L L P  
L O S A N G E L E S • L O N G B E A C H

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Howard Hughes Center • 6060 Center Drive, Tenth Floor, Los Angeles, California 90045

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Warren L. Patton  
(1912-1985)

John M. Lee  
(1921-1978)

(310) 242-2674  
dparkhurst@fulpat.com

December 29, 2003

Via Federal Express

John W. McMullen  
Custom Building Products  
13001 Seal Beach Boulevard  
Seal Beach, CA 90740

Re: New U.S. Utility Patent Application  
Store with Interactive Kiosk and Method of Operation  
Our Docket: CUSTB-63550

Dear John:

Enclosed is a final draft of the above-identified application, incorporating comments and corrections to the application by you and Norm Tracy. After you have checked the application for accuracy and completeness, we would appreciate if you and Norm Tracy would sign and date the declaration and power of Attorney as indicated. Also enclosed is an assignment, which should be signed by both of you, and notarized if possible, on the same day as the declaration and power of Attorney is signed. If any corrections are to be made to either of these documents by interlineation, they should be initialed.

Please note that the declaration at the end of the application contains an acknowledgment of the inventor's duty to disclose all information of which the inventor is aware that is material to the examination of the application. This is a continuing duty which does not terminate upon filing of the application. The same duty is imposed on us as attorneys, and on the corporation as assignee of the application. The purpose of the disclosure requirement is to insure that the Patent and Trademark Office has before it all of the prior art that may affect the validity of a patent. This has the effect of strengthening patents that ultimately are granted. Failure to satisfy the disclosure requirement may result in loss of patent rights, as well as other potentially serious consequences.

F U L W I D E R P A T T O N L E E & U T E C H T, L L P  
L O S A N G E L E S • L O N G B E A C H

Howard Hughes Center • 6060 Center Drive, Tenth Floor, Los Angeles, California 90045

www.fulpat.com • 310-824-5555 • 310-824-9696 fax

John W. McMullen  
December 29, 2003  
Page 2

Accordingly, if you have not already provided us with all such information, we need it as soon as possible so that we can make an early determination as to its materiality, and so that we can prepare an appropriate statement, if necessary, for filing with the application. For purposes of determining what information you should forward to us, we suggest you consider "material information" to include information relating to any publications, public uses or offers for sale of the invention or anything closely similar to it occurring before the filing of the application. If any such publications are patents, we suggest you consider them material no matter when issued.

As you may be aware, for a variety of reasons even "material information" may ultimately have little or no bearing on the patentability of the invention. For example, if a publication occurred less than a year before the filing date and after completion of the invention, it will not affect patentability. Moreover, an invention often can be distinguished over material information by appropriate argument to the Patent and Trademark Office, or by amendment of the claims.

After the papers have been executed, please return them to us for filing in the United States Patent and Trademark Office. Please remember that the application must be filed in the Patent and Trademark Office within one year of the first public disclosure, public use or offer for sale of the invention and must be filed before any such event if protection in certain foreign countries is desired. Therefore, it is important that the application be executed and returned to us for filing as quickly as possible to ensure an early filing date. We are enclosing a self-addressed Federal Express envelope for your convenience in returning the application, Declaration and Assignment to us. Please call if you have any questions. We look forward to receiving the executed papers back so that we may file the application by the January 24, 2004 bar date.

Sincerely,

FULWIDER PATTON LEE & UTECHT, LLP



David G. Parkhurst

DGP:rvw

Enclosures  
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